IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2523 OF 2005

Kanti Manilal Savla
and 4 Ors. ...Petitioners.

Versus

The State of Maharashtra
and 3 Ors. ...Respondents.

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Mr.Bipin Joshi, Advocate for the Petitioners.

Mrs.M.M.Deshmukh, APP, for the State.

Mr.Naveen Joshi, Advocate for proposed Respondent No.2.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : OCTOBER 16, 2006.

(IN CHAMBER AT 2:35 P.M.)

P.C.:

1. Heard Mr.Bipin Joshi learned counsel for the petitioners, Mr.Naveen Joshi learned counsel for respondent No.2-original complainant, and Mrs.Deshmukh learned APP for the State.

2. The petitioners-orig. accused Nos.1 to 4 &

10 are facing prosecution in Case No.47/C of 1999 pending before the learned Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai. In the said case, by order dated 30th November, 1999 process came to be issued against the petitioners and other accused persons under Sections 166, 341, 380, 448 r.w. 34 and 120 B of the IPC. In the said case the original complainant was Respondent No.2-Smt.Geeta Mahendra Kharat. However, during pendency of the proceedings Smt.Geeta Mahendra Kharat expired on 2nd February, 2006. Shri.Shankar Vithoba Kharat, who is father-in-law of Smt.Geeta Mahendra Kharat and who is also a witness in the said case, has been substituted in place of Smt.Geeta Mahendra Kharat by the learned Special Metropolitan Magistrate by his order dated 8th August, 2006. In view of this development, Mr.Joshi the learned counsel for the petitioners seeks leave to substitute the name of Respondent No.2 - Smt.Geeta Mahendra Kharat with the name of Shri.Shankar Vithoba Kharat who is present in person today. Leave granted. Amendment to be carried out forthwith.

3. The petitioners had earlier preferred

Criminal Writ Petition No.330 of 2001 before this Court praying therein that the order dated 30th November, 1999 passed by the learned Metropolitan Magistrate issuing process against the petitioners under Sections 166, 341, 380, 448 r.w. 34 and 120 B of the IPC be quashed. In the said Writ Petition by order dated 6th March, 2003 permission was granted to the petitioners to withdraw the petition with liberty to file appropriate proceedings before the "trial court". However, in the meantime the decision of the Supreme Court was rendered in the case of **Adalat Prasad Vs. Rooplal Jindal and Ors., 2004 (4) Mh.L.J. 274**, and **Subramanium Sethuraman Vs. State of Maharashtra and Anr., 2005(1), Mh.L.J.626**, wherein it was held that the Magistrate does not have the power to recall his order issuing process against the accused persons. In view of this, in the present petition, it is prayed that the petitioners be allowed to approach the "Sessions Court" as per the decision in the Case of **V.K.Jain and others Vs. Pratap V. Padode, reported in 2005(3) Mh.L.J.778**.

4. In view of the decisions of the Supreme

Court in the case of **Adalat Prasad** (supra) and **Subramanium Sethuraman** (supra), it is obvious that the petitioners cannot approach the learned Metropolitan Magistrate for recall of the order issuing process against the petitioners. Though, there are many prayers in the present writ petition, the learned counsel for the petitioners has restricted his prayer to prayer clause (b) i.e. to review and/or recall the order dated 6th March, 2003 passed by this Court in Criminal Writ Petition No.330 of 2001.

5. In view of the facts stated above, the earlier order dated 6th March, 2003 passed by this Court in Criminal Writ Petition No.330 of 2001 is modified and instead of the petitioners being granted liberty to approach the "trial court", the petitioners are granted liberty to prefer revision before the concerned "Sessions Court".

6. Mr.Bipin Joshi the learned counsel for the petitioners states that revision will be preferred before the concerned Sessions Court within four weeks from today. Mr.Naveen Joshi the learned counsel for respondent No.2-original complainant,

on instructions from Shri.Shankar Vithoba Kharat who is present in person, fairly states that if the revision is filed before the concerned Sessions Court within four weeks from today then the parties will restrict their arguments to the merits of the case and no objection would be raised as far as limitation is concerned. In case, the revision is preferred within a period of four weeks from today, the learned Sessions Judge shall dispose of the matter on merits after hearing the necessary parties. All contentions of both sides on merits are kept open. Interim stay in terms of prayer clause (c) granted by this Court by order dated 11th August, 2006 to continue for four weeks from today.

7. Criminal Writ Petition is disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)